

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN GUN OWNERS, INC.
and ULYSSES WONG, an individual,

Supreme Court Docket No.: 155196

Plaintiffs-Appellants

Court of Appeals Docket No.: 329632

v

WCCC Case No.: 15-427-CZ

ANN ARBOR PUBLIC SCHOOLS,
and JEANICE K. SWIFT, an individual

Defendants-Appellees.

Mark A. Hopper (P28493)
FERGUSON WIDMAYER PC
*Attorney for Amicus Curiae Brady
Center to Prevent Gun Violence*
538 North Division
Ann Arbor, MI 48104
(734) 662-0222
mark@fw-pc.com

Paul B. Carberry (*pro hac vice* pending)
WHITE & CASE LLP
*Co-Counsel for Amicus Curiae Brady
Center to Prevent Gun Violence*
1221 Avenue of the Americas
New York, NY 10020
(212) 819-8507
pcarberry@whitecase.com

Of Counsel:
Jonathan E. Lowy
Mariel Goetz
Brady Center to Prevent Gun Violence
840 First Street NE, Suite 400
Washington DC 20002
(202) 370-8106
mgoetz@bradymail.org

**SUPPLEMENTAL BRIEF ON APPEAL
BRADY CENTER TO PREVENT GUN VIOLENCE AMICUS CURIAE**

TABLE OF CONTENTS

1.	STATEMENT OF QUESTIONS PRESENTED	1
2.	IDENTITY AND STATEMENT OF INTEREST OF AMICUS CURIAE	1
3.	INTRODUCTION	2
4.	ARGUMENT	3
A.	Under <i>Llewellyn</i> , this Court May Consider the Policy Implications of AAPS’s Prohibition of Firearms in Schools	5
1.	Michigan Courts May Weigh Policy Concerns when Evaluating the Fourth Factor under <i>Llewellyn</i>	5
2.	The State Grants School Districts Broad Authority to Provide for a Safe Environment Conducive to Learning	6
B.	AAPS’s Policy Prohibiting Guns in Schools and at School Functions Is an Appropriate Response to the Unique Threat Posed by Guns.....	7
1.	Guns Pose a Unique Threat to the Safety and Education of Michigan’s Students.....	8
2.	Prohibitions on Guns in Schools Prevent Gun Violence in Schools.....	12
3.	AAPS’s Prohibition on Guns Helps Alleviate Other Deleterious Impacts of Guns in Schools	15
4.	Keeping Guns out of Schools Enjoys Wide-Ranging Support in Michigan.....	17
5.	CONCLUSION.....	18

TABLE OF AUTHORITIES

Page(s)

CASES

Addison Twp v Gout, 435 Mich 809; 460 NW2d 215 (1990).....5

Dist of Columbia v Heller, 554 US 570 (2008)4, 5, 7

Lansing Sch Ed Ass’n v Lansing Bd of Ed, 487 Mich 349; 792 NW2d 286 (2010).....4

Mich Gun Owners, Inc. v Ann Arbor Pub Sch, 318 Mich App 338; 897 NW2d 768
(2016)..... passim

Mich Open Carry Inc. v Clio Area Sch Dist, 318 Mich App 356; 897 NW2d 748
(2016).....6

People v. Llewellyn, 401 Mich 314; 257 NW2d 902 (1977) passim

Stafford’s Restaurant, Inc v Oak Park, 129 Mich App 84; 341 NW2d 235 (1983)5

Wade v Univ of Mich, 320 Mich App 1; 905 NW2d 439 (2017).....7

STATUTES

18 USC § 922(q)(2)(A).....12

Const 1963, art VII, § 222

Const 1963, art VIII, § 13

Const 1963, art VIII, § 26

MCL 123.1102.....1, 7

MCL 380.11a(3)4, 6

MCL 380.13114

US Const, Am II7

MISCELLANEOUS

Ashley Lamb-Sinclair, <i>Teaching While Afraid</i> , Atlantic (Feb. 22, 2018)	15
Benjamin & Bushman, <i>The Weapons Effect</i> , 19 Current Opinion in Psych 93, 96 (2017).....	9
Brady Center to Prevent Gun Violence, <i>No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools</i> (May 2007)	14
Brady Center to Prevent Gun Violence, <i>Real Story Behind School Shootings</i> (Oct. 13, 2014)	9
Catherine Nouhan, <i>Local high school students participate in 'die-in', demand gun reform</i> , Michigan Daily (Mar. 4, 2018)	18
Center for American Progress, <i>Keeping America's Schools Safe from Gun Violence</i> (Apr. 7, 2017).....	3, 4, 14
Centers for Disease Control & Prevention, <i>School-Associated Student Homicides— United States, 1992-2006</i> , Morbidity & Mortality Weekly Report (Jan. 18, 2008)	12
Chuck Johnston, Jamiel Lynch, and Dakin Andone, <i>Armed school resource officer stayed outside as Florida shooting unfolded, sheriff says</i> , CNN (Feb. 22, 2018)	14
Daniel W. Webster, et al., <i>Firearms on Campuses: Research Evidence and Policy Implications 18-19</i> (2016).....	10, 11, 14, 15
Dave Herndon, <i>Dingell to co-chair work group created in response to Parkland shooting</i> , News-Herald (Mar. 1, 2018)	17
Emily Lawler, <i>Gov. Snyder vetoed concealed guns in schools once, and his position hasn't changed</i> , MLive (Nov. 9, 2017).....	17
Giffords Law Center, <i>Guns in Schools</i> (2017).....	12, 13, 14
Greg Toppo, <i>'Generation Columbine' has never known a world without school shootings</i> , USA Today (Feb. 22, 2018)	8
Greg Toppo, <i>'Gun-free school zones' take weapons from kids, not cops</i> , USA Today (Feb. 28, 2018).....	13
Kimberly Quick, <i>Gun Violence Puts Education Under Fire, Stifling Achievement</i> , Century Found. (Jan. 8, 2016)	11

Lara N. Dotson-Renta, <i>When Teachers Fear the Students They Must Protect</i> , Atlantic (Oct. 13, 2015)	15, 16
Luke Edwards, <i>Michigan lawmakers react to the CMU shooting</i> , WWMT.com (Mar. 2, 2018)	17
Maggie Severns, <i>Gov. Rick Snyder: ‘I don’t think having more guns is a good thing’</i> , Politico (Feb. 23, 2018)	17
Malachi Barrett, <i>Students collect 50K signatures in 3 days to demand gun control</i> , MLive (Feb. 18, 2018)	17-18
Michigan Dep’t of Ed, <i>MI Ready Schools: Emergency Planning Toolkit</i> (2011)	11
Rachel Dinkes, et al., <i>Indicators of School Crime and Safety: 2016</i> , US Dep’t of Ed & US Dep’t of Justice Office of Justice Programs (May 2017)	13
Ray Sanchez, et al., <i>There has been, on average, 1 school shooting every week this year</i> , CNN (Mar. 8, 2018)	8
Rick Pluta, <i>MI Supreme Court To Hear Guns In School Case</i> , WKAR (Dec. 21, 2017)	3
Robyn Thomas, <i>Protecting the Parkland Generation, Strategies to Keep America’s Kids Safe from Gun Violence</i> , Giffords Law Center (2018)	9, 10
Ryan Stanton, <i>Ann Arbor weighing in on guns-in-schools debate before Michigan Supreme Court</i> , MLive (Feb. 6, 2018)	18
Samantha Michaels, <i>New Research Confirms Guns on College Campuses Are Dangerous: The data shows they don’t deter rampage shooters, and may lead to other violence</i> , Mother Jones (Nov. 2, 2016)	9
Stephen Wu, et al., <i>2013 Hamilton College Youth Poll: Attitudes Towards Gun Control and School Violence</i> , Knowledge Networks and Hamilton College (Dec. 2013).	10
Tim Walker, <i>NEA Poll: Educators Support Stronger Laws to Prevent Gun Violence</i> , NEA Today (Jan. 15, 2013)	16

1. STATEMENT OF QUESTIONS PRESENTED

This Court has asked (1) whether, in light of MCL 123.1102 it is necessary to consider the factors set forth in *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977), in order to determine whether the defendant-appellees' policies at issue are preempted by State law; (2) if so, whether the Court of Appeals properly analyzed the *Llewellyn* factors; and (3) whether the Court of Appeals correctly held that such policies are not preempted.

The Brady Center to Prevent Gun Violence ("Brady Center"), a District of Columbia 501(c)(3) nonprofit corporation, asserts that (1) it is not necessary to consider the factors set forth in *Llewellyn* to determine whether Ann Arbor Public School's ("AAPS") policies at issue are preempted; (2) the Court of Appeals properly analyzed the *Llewellyn* factors; and (3) the Court of Appeals correctly held that the policies at issue are not preempted. The Brady Center supports and refers to the briefs of the AAPS and *amicus curiae* Michigan Association of School Boards for a discussion of (1) and (3), *supra*, and the first three *Llewellyn* factors. As to the fourth *Llewellyn* factor, the Brady Center asserts that the Court of Appeals properly included policy considerations in its analysis of that factor and that the policy considerations here militate towards finding that AAPS is not prohibited from regulating the possession of firearms on the premises of its schools.

2. IDENTITY AND STATEMENT OF INTEREST OF AMICUS CURIAE

The Brady Center to Prevent Gun Violence is the nation's oldest, largest, nonpartisan, non-profit organization dedicated to reducing gun violence through education, research and legal advocacy. For over 25 years, the Brady Center's Legal Action Project has been the nation's leading public interest law program devoted to fighting in the courts to reduce gun violence, by

representing victims of gun violence and defending reasonable gun laws, and has filed numerous *amicus curiae* briefs in cases involving firearms regulations and laws affecting gun violence.

Along with the citizens of Michigan, the Brady Center has a substantial interest in ensuring that state laws, including Michigan's preemption doctrine under Article VII, § 22, of Michigan's Constitution and as interpreted by *Llewellyn*, are not interpreted or applied in a way that would prohibit reasonable government action that helps to limit gun violence. Conversely, the Brady Center opposes any interpretation or application of state laws that could incentivize or lead to an increase in gun violence.

No party's counsel has authored this brief, in whole or in part, nor has any party's counsel, or any other person other than *amicus curiae*, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

3. INTRODUCTION

In the wake of several high profile school shootings across the United States, and in response to the serious disruption of a local school event caused by an individual who openly carried a firearm into a choir concert, Ann Arbor Public Schools ("AAPS") banned the possession of firearms on school district property and at school-sponsored activities. AAPS rightfully and reasonably determined that such a prohibition furthered the safety and welfare of its students and would minimize material disruptions of the educational environment.

That AAPS chose to enact a sensible policy—indeed one in furtherance of its most fundamental responsibilities—may be relevant to this Court's preemption analysis. If this Court ultimately determines that it must analyze the factors set forth in *Llewellyn*, then under the fourth *Llewellyn* factor—whether the nature of the subject matter at issue demands exclusive state

regulation—it may consider the policy implications of the regulation of the subject matter at issue.

Michigan law makes clear that school boards possess significant autonomy and broad authority to provide for the safety of their students. Moreover, Michigan law clearly contemplates weapon-free school zones. Firearms pose a special threat to the safety of students, teachers, administrators and guests, and school boards have a responsibility to enact policies to provide for safety in schools. Accordingly, the nature of the subject matter at issue—prohibitions of firearms in schools—militates against finding that Michigan law impliedly preempts school boards from banning individuals from possessing firearms in school zones.

4. ARGUMENT

The Michigan Constitution recognizes that schools are vehicles for cultivating knowledge, which is “necessary to good government and the happiness of mankind,” and should therefore “forever be encouraged.” Const 1963, art. VIII, § 1. Schools must have the latitude to enact policies which safeguard and protect their students’ ability to learn and foster a reasonable, non-chaotic atmosphere, which are essential to schools’ educational mission. Schools also have a solemn responsibility to keep their students, for whom they stand *in loco parentis*, safe and secure. Indeed, the safety and welfare of students, teachers, administrators and guests is a necessary predicate to the creation of an environment conducive to learning—the *raison d’être* of any school. As Chris Wigent of the Michigan Association of School Administrators explained, “[w]e can’t educate [students] if they don’t feel safe.”¹ That is why thirty-nine states

¹ Rick Pluta, *MI Supreme Court To Hear Guns In School Case* <<http://wkar.org/post/mi-supreme-court-hear-guns-school-case#stream/0>> (accessed March 13, 2018).

and the District of Columbia have enacted policies to “prohibit the possession of guns on school property, even by individuals with a valid concealed carry permit.”²

The State of Michigan recognizes that its school districts must cultivate a safe environment conducive to learning if its schools are to provide quality education to Michigan school children. For this reason, Michigan has broadly empowered schools and school districts with the authority to take measures in furtherance of maintaining such an environment and the autonomy to tailor specific safety measures to local conditions and concerns. *See* MCL 380.11a(3)(b). Furthermore, this Court has remarked that the legislative history of MCL 380.1311 “make[s] clear that the purpose of the section is to create a safer school environment . . . and a safer more effective working environment for teachers.” *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 374; 792 NW2d 286, 700 (2010).

Part and parcel of an environment conducive to learning is the avoidance of situations that can throw a school into the chaos of alarms and lock-downs, simply because an individual chooses to enter a building with a visible firearm. School administrators and staff simply do not have the luxury of waiting to see whether such an individual is a “good guy with a gun” or a “bad guy with a gun” before turning the learning environment upside down.

Application of the fourth *Llewellyn* factor, which encompasses policy considerations, therefore counsels this Court to uphold local policies like those at issue here. The regulated subject matter at issue—the possession of firearms *on school property* and *at school functions* when students are present—implicates these most fundamental of school district responsibilities. Indeed, schools are sensitive, unique places with safety concerns so paramount that the Supreme Court of the United States has stated that policies tailored to improve school safety may even

² Center for American Progress, *Keeping America’s Schools Safe from Gun Violence* <<https://www.americanprogress.org/issues/guns-crime/reports/2017/04/07/430247/keeping-americas-schools-safe-gun-violence/>> (accessed March 13, 2018).

override any rights an individual has to possess a gun. *See Dist of Columbia v Heller*, 554 US 570, 626 (2008) (“nothing in our opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as schools”). Through its promulgated policies, AAPS has demonstrated its reasoned belief that prohibiting guns, especially those carried openly, will provide an environment most conducive to the education and safety of its students. Its determination that this policy will help achieve a safe environment at its schools should not be disturbed.

A. Under *Llewellyn*, this Court May Consider the Policy Implications of AAPS’s Prohibition of Firearms in Schools

1. Michigan Courts May Weigh Policy Concerns when Evaluating the Fourth Factor under *Llewellyn*.

The fourth factor of the *Llewellyn* test is whether the nature of the regulated subject matter demands exclusive state regulation in order to “serve the state’s purpose or interest.” *See Llewellyn*, 401 Mich 314 at 324. In analyzing this factor, Michigan courts may consider policy implications of the subject matter regulated. *See id.* at 324-25 (where “the nature of the regulated subject matter calls for regulation adapted to local conditions, and the local regulation does not interfere with the state regulatory scheme, supplementary local regulation has generally been upheld”); *Addison Twp v Gout*, 435 Mich 809, 815; 460 NW2d 215, 217-18 (1990) (citing *Llewellyn* and finding that even where “distinct legislative goals exist,” the purposes of the separate regulatory acts do not necessarily conflict, “nor do they suggest that uniformity is necessary to effectuate these distinct legislative goals”); *Stafford’s Restaurant, Inc v Oak Park*, 129 Mich App 84, 91; 341 NW2d 235, 238-39 (1983) (considering whether liquor licenses were local interests “as a matter of policy”).

Indeed, in upholding AAPS's ban on firearms on school property and at school functions, the Court of Appeals expressly recognized the Legislature's empowerment of school districts to provide for a safe environment under MCL § 380.11a(3)(b) as a reason not to disturb the district's policy. *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 318 Mich App 338, 349; 897 NW2d 768, 773 (2016); *see also Mich Open Carry Inc v. Clio Area Sch Dist*, 318 Mich App 356, 372; 897 NW2d 748, 757-58 (2016) (quoting MCL 380.11a(3)(b)).

2. The State Grants School Districts Broad Authority to Provide for a Safe Environment Conducive to Learning.

Michigan vests in school districts the authority to create a safe school environment. Article VIII, § 2, of Michigan's 1963 Constitution empowers "[e]very school district" to "provide for the education of its pupils" The Legislature has conferred upon school districts in the state the power to provide "for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity." MCL 380.11a(3)(b).

School safety is foundational to the mission of public schools such that the Legislature has allocated extraordinarily broad powers of autonomy to school districts in order to ensure they are safe. The powers granted to provide for student safety include (i) those expressly granted, (ii) "power implied or incident to a power expressly stated," and (iii) "power incidental or appropriate to the performance of a function related to the operation of a public school and the provision of public education services" MCL 380.11a(3). Not only does the broad grant of authority to school districts demonstrate the importance of school safety to the Legislature, putting such autonomy and discretion in the hands of individual school districts also demonstrates the Legislature's intent that school districts should retain the ability to tailor policy to fit local conditions.

Thus, analysis of the fourth *Llewellyn* factor compels the conclusion that the powers entrusted to school districts by the Legislature to provide a safe learning environment are inconsistent with preemption here. The powers granted to school districts are extraordinarily broad and, particularly when considering the threat that firearms (especially those openly carried) pose to the fulfillment of the educational mission, necessarily include the authority to ban firearms on school campuses.

Indeed, the Court of Appeals in *Wade v Univ of Mich*, 320 Mich App 1, 15; 905 NW2d 439, 445 (2017), rejected an argument similar to that asserted by plaintiffs-appellants here—that MCL 123.1102 preempts the University of Michigan from banning all firearms from the University’s property. In *Wade*, the Court of Appeals reasoned, following the U.S. Supreme Court’s Analysis in *District of Columbia v. Heller*, that rights under the Second Amendment did not apply in the school context and that for the purposes of its constitutional analysis, a university in Michigan constituted a “school.” *Id.* at 15. It then upheld the University’s refusal to grant a waiver to carry a weapon on campus, concluding that the Legislature “must yield to the University’s authority” over matters pertaining to the university’s “management and control of its institution or property.” *Id.* at 15-16. This Court should recognize that, as with the University of Michigan, the Michigan legislature delegated broad autonomy and authority to local school districts to provide for the safety of their students. School safety is so important that school districts must be allowed to adapt to local concerns including, if necessary, by banning or otherwise controlling firearms on their premises.

B. AAPS’s Policy Prohibiting Guns in Schools and at School Functions Is an Appropriate Response to the Unique Threat Posed by Guns

Guns pose a uniquely grave threat to school safety and function. Indeed, the mere *presence* of guns in a school setting is disruptive in the extreme. Given the broad authority and

wide-ranging autonomy provided to schools to ensure the safety of the students under their supervision and provide an environment conducive to learning, AAPS's decision to prohibit possession of firearms on school property and at school functions is a reasonable response to this threat.

1. Guns Pose a Unique Threat to the Safety and Education of Michigan's Students

A school district's decision to permit or exclude guns on school property and at school functions requires consideration of what makes an educational setting sufficiently safe to be conducive to a healthy learning environment. Guns and gun violence pose a threat to the safety of students, teachers, administrators, and guests. Moreover, fear and anxiety related to gun violence can also hinder student development. The presence of openly carried guns can exacerbate these problems, and also cause serious disruption in the educational environment.

School-age students in Michigan and across the country "have never known a world without school shootings."³ Last month, the deadly shooting in Parkland, Florida, at Marjory Stoneman Douglas High School, represented the 208th school shooting since the tragic school shooting at Columbine High School in Littleton, Colorado.⁴ This equates to "more than one shooting per month, every month, for nearly 19 years."⁵ It is tragic and unacceptable that a mere three months into 2018 there have already been 14 school shootings at the time of this filing.⁶

³ Greg Toppo, 'Generation Columbine' has never known a world without school shootings, USA Today (explaining that just as grandparents feared polio and parents feared nuclear war, these 'Generation Columbine' students fear school shootings) <<https://www.usatoday.com/story/news/2018/02/22/generation-columbine-has-never-known-world-without-school-shootings/361656002/>> (accessed March 13, 2018).

⁴ *Id.*

⁵ *Id.*

⁶ Ray Sanchez, et al., *There has been, on average, 1 school shooting every week this year*, CNN <<https://www.cnn.com/2018/03/02/us/school-shootings-2018-list-trnd/index.html>> (accessed March 13, 2018).

Mass school shootings have tragically become part and parcel of American life. And while mass shootings receive the lion's share of attention when examining issues surrounding guns in schools, the threat of gun violence in schools does not end there. Approximately 1.7 million children have "access to an unlocked, loaded gun at home," and "one in 20 high school students reported carrying a weapon in the past 30 days."⁷ Schools are also emotionally volatile places, rife with bullying, uncomfortable encounters, and students going through challenging periods in their development. With guns added to the mix, students are more likely to develop increased aggression and strained relationships with both their teachers and peers. Indeed, research confirms that students are much less likely to use guns in schools "to inflict harm on themselves or others" than to stop a rampage shooter.⁸ Self-harm and risk of suicidal behavior in students "peaks at age 16," when the students in this case would still be in the Michigan school system.⁹ Moreover, research shows that the mere presence of weapons "increase[s] aggressive thoughts and hostile appraisals," which explains the strong relationship between acting out in the classroom and school shootings.¹⁰

Even absent actual violence, the mere presence of guns in school and the overhanging threat of gun violence have deleterious educational impacts on their own. Studies demonstrate that children who feel safe are more relaxed and are more comfortable exploring their

⁷ Brady Center to Prevent Gun Violence, *The Real Story Behind School Shootings* (Oct. 13, 2014) <<http://www.bradycampaign.org/our-impact/resources/the-real-story-behind-school-shootings>> (accessed March 13, 2018).

⁸ Samantha Michaels, *New Research Confirms Guns on College Campuses Are Dangerous: The data shows they don't deter rampage shooters, and may lead to other violence*, Mother Jones <<https://www.motherjones.com/politics/2016/11/campus-carry-laws-guns-mass-shooters/>> (accessed March 13, 2018).

⁹ *Id.*

¹⁰ Benjamin & Bushman, *The Weapons Effect*, 19 *Current Opinion in Psych* 93 (2017); *see also* Alan Yuhas, *Mere sight of a gun makes police – and public – more aggressive, experts say*, *The Guardian* <<https://www.theguardian.com/us-news/2015/aug/05/gun-police-public-more-aggressive-psychology-weapons-effect>> (accessed March 13, 2018).

environments.¹¹ Guns in schools, however, can create intense fear and anxiety that can disrupt the learning process and hinder student development, even if the guns are never discharged. Indeed, those who are fearful of gun violence are more likely to experience debilitating anxiety and to regress in key developmental areas, like language skills.¹² A 2013 study of youth attitudes towards gun control and school violence revealed that nearly 60% of high schoolers are concerned about a potential mass shooting in their school or community.¹³ Although many schools in America now practice active shooter drills and other emergency preparedness exercises—diverting valuable school time and financial resources to non-educational matters¹⁴—these (sadly necessary) drills can do additional harm to the educational environment. Unsurprisingly, students who are extremely fearful or hyper-aware of potential danger may be more focused on possible threats than on academic instruction.¹⁵ Ultimately, the presence of guns in school is responsible for a growing culture of fear and anxiety that detracts from the educational environment.

Permitting guns on school grounds is particularly problematic given adolescents' susceptibility to volatility. Students' "developmental processes in adolescence are associated

¹¹ Robyn Thomas, *Protecting the Parkland Generation, Strategies to Keep America's Kids Safe from Gun Violence* at 13, Giffords Law Center <http://lawcenter.giffords.org/wp-content/uploads/2018/03/18.03-REP-Kids-and-Guns_R3-GWM.pdf> (accessed March 13, 2018).

¹² *Id.* at 13-14.

¹³ *Id.* at 2; Stephen Wu, et al., "2013 Hamilton College Youth Poll: Attitudes Towards Gun Control and School Violence," Knowledge Networks and Hamilton College, <December 2013, <<https://www.hamilton.edu/news/polls/gun-control-and-school-violence>> (accessed March 13, 2018).

¹⁴ *Id.* at 2.

¹⁵ Giffords Law Center, *Protecting the Parkland Generation, Strategies to Keep America's Kids Safe from Gun Violence* at 21-22.

with more risk-taking, and poorer self-control in the transition to adulthood.”¹⁶ Researchers have shown that students’ “exposure to gun violence links to feelings of anger and dissociation, disrupts sleep patterns, and increases the frequency of mental health conditions”¹⁷ Significantly, researchers also believe that “secondhand experiences with gun violence can also expose children to these ailments.”¹⁸ This means that being exposed to guns in schools, even without actually experiencing violence firsthand, can have lasting negative impacts on students’ education and development. Thus, the open carry of weapons on campus poses an even greater risk to the educational environment than allowing licensed individuals to carry a concealed weapon, which is much less likely to be observed by students.

Finally, as the Court of Appeals correctly reasoned, the presence of guns on campus, even if entirely legal, will provide a material disruption to the learning environment. *Ann Arbor Pub. Sch.*, 318 Mich App at 355 (“AAPS policy ensures that the learning environment remains uninterrupted by the invocation of emergency procedures that would surely be required each and every time a weapon is openly carried by a citizen into a school building.”). Indeed, such a presence is classified as an emergency by the Michigan Department of Education,¹⁹ despite there being no explicit statewide ban on openly carrying firearms in the schools the Department oversees. Once a gun is observed on school grounds, even if carried by an individual legally entitled to do so, a school *must* immediately implement emergency procedures, causing immense

¹⁶ Daniel W. Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications*, at 18-19 (October 15, 2016) <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_pdfs/GunsOnCampus.pdf> (citations omitted).

¹⁷ Kimberly Quick, *Gun Violence Puts Education Under Fire, Stifling Achievement*, Century Found (Jan. 8, 2016) <<https://tcf.org/content/commentary/gun-violence-puts-education-under-fire-stifling-achievement/>> (accessed March 13, 2018).

¹⁸ *Id.*

¹⁹ Michigan Dep’t of Ed, *MI Ready Schools: Emergency Planning Toolkit*, p. 3 (2011).

disruption to the learning environment. Moreover, if frequent enough, these disruptions may lead to a “boy who cried wolf” phenomenon. After several false alarms, administrators, teachers and students may no longer implement emergency procedures with sufficient urgency and this complacency could exacerbate the amount of damage a shooter can inflict in a mass shooting. Schools, tasked with keeping students safe, just cannot afford to wait and see whether an individual on campus with a firearm has ill intent. The consequences of waiting could be catastrophic.

Therefore, the presence of guns in schools directly impedes the ability of schools to perform their most basic and important function—providing a safe, secure, healthy learning environment for students.

2. Prohibitions on Guns in Schools Prevent Gun Violence in Schools

Prohibiting guns in schools is an effective way to prevent gun violence in schools. The Federal Gun-Free School Zones Act (passed in 1990) and similar state laws creating school gun-free zones have helped significantly reduce gun violence in schools.²⁰ For instance, “school-associated student homicide rates decreased after the federal laws restricting guns within 1,000 feet of schools were adopted . . . and fewer students are carrying guns.”²¹ One study shows that between 1992 and 2006, 50 times as many murders of young people ages 5-18 occurred away from school than at school, and at least 140 times as many youth suicides were committed off school property than at school.²² During the 2010-11 school year, there was approximately one

²⁰ See 18 USC § 922(q)(2)(A); Giffords Law Center, *Guns in Schools* <http://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/guns-in-schools/> (accessed March 13, 2018).

²¹ Giffords Law Center, *Guns in Schools* (citing Centers for Disease Control & Prevention, *School-Associated Student Homicides—United States, 1992-2006*, Morbidity & Mortality Weekly Report (Jan. 18, 2008) <<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm>>).

²² Giffords Law Center, *Guns in Schools*.

homicide or suicide of students at school per 3.5 million enrolled students.²³ Indeed, the relative safety of schools is a direct result of federal and state laws banning guns in and around schools.²⁴ A 2017 report on school safety by the U.S. Department of Education's National Center for Education Statistics found that the number of crimes against students has plummeted more than 80% since 1992.²⁵ During that time, serious legislative efforts were made to make schools gun-free zones.²⁶ The result of these efforts is that students, as of 2015, feel safer while at school than they did before these laws took effect. In the 20 years from 1995 to 2015, the percentage of students who report being afraid of being attacked or harmed while at school dropped from 12% to 3%.²⁷

Prohibiting guns in schools not only helps to reduce instances of gun violence at school, but may also help mitigate the harm of gun violence when an individual does seek to inflict it. When firearms are prohibited at schools, the presence of such a weapon should and often does trigger an immediate invocation of emergency procedures. In the event of an active shooter every second counts, so a ban on firearms may facilitate schools' invocation of emergency procedures without having to take the extra step of analyzing whether the armed individual on campus poses a threat to the safety of students or others.

²³ *Id.*

²⁴ *Id.*

²⁵ Greg Toppo, '*Gun-free school zones*' take weapons from kids, not cops, USA Today (Feb. 28, 2018) (citing Rachel Dinkes, et al., *Indicators of School Crime and Safety: 2016*, US Dep't of Ed & US Dep't of Justice Office of Justice Programs (May 2017), <<http://nces.ed.gov/pubs2017/2017064.pdf>>), <<https://www.usatoday.com/story/news/2018/02/28/gun-free-school-zones-draw-trumps-ire-but-advocates-protest/381902002/>> (last visited Mar. 13, 2018).

²⁶ Giffords Law Center, *Guns in Schools*.

²⁷ Greg Toppo, '*Gun-free school zones*' take weapons from kids, not cops.

Research likewise shows that *more* guns in schools—for example, by eradicating barriers to carrying weapons in schools—is both dangerous and counterproductive.²⁸ The claim that the gun-free nature of school zones invites mass shootings “has been thoroughly debunked by research showing that the overwhelming majority—nearly 90%—of all high-fatality gun massacres since 1966 have occurred wholly or partly in locations where civilian guns were allowed or there was armed security or law enforcement present.”²⁹ A recent Johns Hopkins report found that “[s]uccessful civilian uses of guns to stop a mass shooting were incredibly rare,” and armed civilians were just as likely to be shot while attempting to stop an active shooter.³⁰ Additionally, an FBI study that examined 160 shootings in the United States found only one incident that involved an armed civilian intervening to end an attack in progress.³¹

The recent Parkland, Florida high school shooting provides a tragic example of the flaw in the theory that more guns in schools will prevent gun violence. Marjory Stoneman Douglas High School actually had a trained armed school resource officer onsite, yet the presence of this officer did not deter the perpetrator from making his attack. As it turns out, this officer reportedly “waited outside the school as the shooting unfolded,” rather than attempting to intervene once the attack had begun.³² Taken in totality, the available evidence indicates that

²⁸ See Brady Center to Prevent Gun Violence, *No Gun Left Behind: The Gun Lobby’s Campaign to Push Guns Into Colleges and Schools*, 9-11, 34, n.2 (May 2007), <<https://www.bradycampaign.org/sites/default/files/no-gun-left-behind.pdf>> (accessed March 13, 2018); see also Giffords Law Center, *Guns in Schools*; Center for American Progress, *Keeping America’s Schools Safe from Gun Violence*.

²⁹ Giffords Law Center, *Guns in Schools*.

³⁰ Daniel W. Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications*, at 2.

³¹ *Id.* at 11.

³² Chuck Johnston, Jamiel Lynch, and Dakin Andone, *Armed school resource officer stayed outside as Florida shooting unfolded, sheriff says*, CNN (Feb. 22, 2018), <<https://www.cnn.com/2018/02/22/us/florida-school-shooting/index.html>> (accessed March 13, 2018).

permitting guns in schools in the hope that armed civilians will be able to stop an active school shooter will not serve the deterrent effect some hope it will.³³

3. AAPS's Prohibition on Guns Helps Alleviate Other Deleterious Impacts of Guns in Schools

Prohibiting guns in schools, especially those openly carried, also helps alleviate many of the other harms associated with the presence of guns. While improved safety is the most direct effect of banning guns in school and at school functions, there are several other beneficial consequences that result from removing the fear and anxiety that the presence of guns can induce.

Policies that bar guns from schools and school-sponsored activities can be instrumental in removing unwarranted fear and anxiety from the educational environment, thus facilitating improved educational outcomes. As noted in *The Atlantic*, "Teaching While Afraid," Kentucky teacher Tiffany Hursh Gruen explained the overwhelming silence and lack of peer collaboration in her school post-Columbine.³⁴ At Ms. Gruen's school, "doors are locked and learning takes place in closed spaces. 'There was a time in [her] career when we encouraged teachers to keep their doors open, let the learning spill out, fill the halls with the sounds of excited exploration, [but] now it's [just] silence.'"³⁵ In addition to closing classroom doors, teachers note that successful and meaningful education requires "interfacing with students and frequently challenging them, pushing them to think critically, work hard, and disagree with their educators

³³ Daniel W. Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications* at 10-16 (citations omitted).

³⁴ Ashley Lamb-Sinclair, *Teaching While Afraid*, *The Atlantic*, (Feb. 22, 2018), <<https://www.theatlantic.com/education/archive/2018/02/teaching-while-afraid/553931/>> (accessed March 13, 2018).

³⁵ *Id.*

and each other.”³⁶ Therefore, if guns continue to enter school grounds, the classroom engagement necessary to challenge and expand students’ views and minds will certainly be stifled.³⁷ Further, as discussed above, the threat of guns in and around schools has led schools to devote precious time and resources towards dealing with such threats, rather than on key educational needs. To the extent that prohibiting guns in schools reduces the threat of gun violence—and, as discussed above, it does—such prohibitions may allow schools to invest more time towards fostering an educational environment conducive to learning instead of towards gun violence prevention and preparedness.

Further, to the extent a prohibition on openly-carrying guns in schools succeeds in preventing citizens from openly carrying a firearm onto campus, such a policy would also prevent harmful disruption from the unnecessary invocation of emergency procedures and ensure that when such emergency procedures are needed, they are carried out with the appropriate urgency.

Moreover, if schools are prohibited from banning weapons on school grounds, they may experience a reduction in the recruitment and retention of educators. A poll conducted by the National Education Association (the “NEA”) illustrates “support [for] stronger gun laws to prevent gun violence and keep children safe.”³⁸ This poll found that nearly two-thirds of NEA members, most of whom are public school teachers, are in favor of stricter gun laws.³⁹ Indeed, it would be unsurprising if educators move to safer schools if certain schools fail to take steps to

³⁶ Lara N. Dotson-Renta, *When Teachers Fear the Students They Must Protect*, The Atlantic (Oct. 13, 2015), <<https://www.theatlantic.com/education/archive/2015/10/teacher-or-combatant/411925/>> (accessed March 13, 2018).

³⁷ *Id.*

³⁸ Tim Walker, *NEA Poll: Educators Support Stronger Laws to Prevent Gun Violence*, NEA Today (Jan. 15, 2013), <<http://neatoday.org/2013/01/15/nea-poll-educators-support-stronger-laws-to-prevent-gun-violence-2/>> (accessed March 13, 2018).

³⁹ *Id.*

remove guns and find safe means to adequately protect classrooms. If Michigan educators feel endangered teaching in their own classrooms, Michigan may have difficulty retaining quality educators and its schools may suffer as a result.

4. Keeping Guns out of Schools Enjoys Wide-Ranging Support in Michigan

Politicians from across the political spectrum publicly recognize that schools must have the authority to enact policies prohibiting guns from school property and school-sponsored activities. For example, in the aftermath of the Parkland shooting, Michigan Governor Rick Snyder stated, “I don’t think having more guns [in schools] is a good thing,”⁴⁰ and has explained recently that he believes “it is important that [schools] have clear legal authority to ban weapons on their premises.”⁴¹

The Parkland shooting inspired U.S. Representatives Debbie Dingell (D-12th District) and Fred Upton (R-6th District) to form a Working Group on Response to Parkland Shooting, with Dingell emphasizing that, “[w]e all have a responsibility to ensure our students feel safe at school.”⁴² Following another school shooting on the campus of Central Michigan University, Upton commented on the damage such violence does to the educational process, noting that “kids can’t learn at any level if their safety is in question.”⁴³ Ultimately, Upton explained that

⁴⁰ Maggie Severns, *Gov. Rick Snyder: ‘I don’t think having more guns is a good thing’* Politico (Feb. 23, 2018), <<https://www.politico.com/story/2018/02/23/rick-snyder-guns-422743>> (accessed March 13, 2018).

⁴¹ Emily Lawler, *Gov. Snyder vetoed concealed guns in schools once, and his position hasn’t changed*, MLive (Nov. 9, 2017), <http://www.mlive.com/news/index.ssf/2017/11/gov_snyder_vetoed_concealed_gu.html> (accessed March 13, 2018).

⁴² Dave Herndon, *Dingell to co-chair work group created in response to Parkland shooting*, News-Herald (Mar. 1, 2018), <http://www.thenewsherald.com/news/dingell-to-co-chair-work-group-created-in-response-to/article_66e216fb-bf84-513b-ba32-ed7ed6facb32.html> (accessed March 13, 2018).

⁴³ Luke Edwards, *Michigan lawmakers react to the CMU shooting*, WWMT.com (Mar. 2, 2018), <<http://wwmt.com/news/local/michigan-lawmakers-react-to-the-cmu-shooting>> (accessed March 13, 2018).

lawmakers should do whatever it takes to ensure the safety of students: “Nothing should be off the table: Our kids must be safe from violence at school. Period.”⁴⁴

School administrators and community leaders in Michigan have also voiced support for banning guns in school and ensuring the safety of students. Ann Arbor Mayor, Christopher Taylor, who attended the 2015 Pioneer High School choir concert that inspired the policy at the heart of the present lawsuit, explained that when a resident openly carried a gun to this school-sponsored event it created a disruption to the school function.⁴⁵ Mayor Taylor has pledged to support AAPS students in their pursuit of gun reform, recognizing their right to feel safe in school.⁴⁶

5. CONCLUSION

School districts throughout the State of Michigan are charged with the important responsibility of ensuring the safety of the students in their schools. By creating policies that ban guns from schools and school-sponsored activities, school districts may seek to replicate the positive results that have been achieved by gun-free school zone policies around the country. Just as those policies have reduced violence in schools, enhanced the safety of students, teachers and administrators, and facilitated the creation of a better learning environment, school districts

⁴⁴ Malachi Barrett, *Students collect 50K signatures in 3 days to demand gun control*, MLive (Feb. 18, 2018), <http://www.mlive.com/news/kalamazoo/index.ssf/2018/02/high_school_students_petition.html> (accessed March 13, 2018).

⁴⁵ Ryan Stanton, *Ann Arbor weighing in on guns-in-schools debate before Michigan Supreme Court*, MLive (Feb. 6, 2018), <http://www.mlive.com/news/ann-arbor/index.ssf/2018/02/arbor/index.ssf/2018/02/ann_arbor_weighing_in_on_guns-.html> (accessed March 13, 2018).

⁴⁶ See Catherine Nouhan, *Local high school students participate in ‘die-in’, demand gun reform*, The Michigan Daily (Mar. 4, 2018), <<https://www.michigandaily.com/section/ann-arbor/washtenaw-youth-initiative-stages-%E2%80%98die-demands-gun-reform>> (accessed March 13, 2018).

in Michigan rightfully may hope that implementing prohibitions on firearms will also make their schools safer as well as alleviate harmful fears of future school shootings.

The Brady Center respectfully requests that this Court affirm the determination of the Court of Appeals that Michigan state law does not preempt AAPS from implementing its policies prohibiting firearms on school property and at school events. School districts retain broad authority to provide for the safety of students, teachers, and administrators, and should a district determine—as AAPS reasonably did here—that prohibiting guns from schools furthers this solemn responsibility, this Court should not interpret Michigan law to preempt such an exercise of lawful authority.

/s/ Mark A. Hopper
Mark A. Hopper (P28493)
Ferguson Widmayer PC
538 North Division
Ann Arbor, MI 48104
(734) 662-0222
mark@fw-pc.com

*Attorney for Amicus Curiae Brady
Center to Prevent Gun Violence*

Paul B. Carberry (*pro hac vice* pending)
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 819-8507
pcarberry@whitecase.com

*Co-Counsel for Amici Curiae Brady
Center to Prevent Gun Violence*

Jonathan E. Lowy
Mariel Goetz
Brady Center to Prevent Gun Violence
840 First Street NE, Suite 400
Washington, DC 20002
mgoetz@bradymail.org
(202) 370-8106

Of Counsel

Dated: March 13, 2018